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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/067,570

02/05/2002

Carl A. Schu

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7590

07/29/2005

MEDTRONIC, INC.

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MS-LC340

MINNEAPOLIS, MN 55432-5604

EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

T. T. T.

Advisory Action **Before the Filing of an Appeal Brief**

Application No.

10/067,570

Applicant(s)

SCHU ET AL.

Examiner

George R. Evanisko

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 112 second paragraph rejections of claims 31 and 32.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 25-34.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

George R Evanisko
Primary Examiner
Art Unit: 3762

7/27/5

Continuation of 11. does NOT place the application in condition for allowance because: the ORIGINAL specification does not state or show the therapy delivery means operating "independently" from the sensor and signal processor. The original specification shows exactly the opposite by showing and describing the therapy device being connected to and triggered by the sensor, 108, and processor. The applicants argument that the original specification states that the therapy delivery device is initiated by patient activation without contemporaneous storage of physiological signals may be correct, but that limitation is NOT CLAIMED (it is suggested to claim "without contemporaneous storage of physiological signals" instead of "independently") and the specification does not use the term "independently". In addition, the scope and bounds of "independently" can not be determined since it is not used in the specification, since the specification clearly shows the exact opposite by showing the therapy device being "dependent" on the sensors, and since the claim itself clearly claims the therapy delivery means being triggered/dependent on the sensor signal and processor. The definition of "independent" is being "free from influence"--as seen by the claim itself and the specification, the therapy device operating "independently" from the sensor and processor is not the case.

The argument that the 112 second paragraph rejection of "the physiological status" in claim 33 should be withdrawn is not persuasive since the claim says "at least one of:...the signal and the physiological status" and claim 25 says a signal RELATED TO a physiological status. The signal in claim 25 is the only thing being claimed, not the physiological status, and the signal is only related to a status. The argument that Blaser is devoid of a "sensor" but Blaser describes "sensing" via electrodes conflicts with itself (and is not persuasive). In response to the other arguments, please see the previous "Response to Arguments" in the detailed action of 5/16/05.